



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9964]

RIN 1545-BI29

Disclosure of Information to State Officials Regarding Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations provide guidance to states regarding the process by which they may obtain or inspect certain returns and return information (including information about final and proposed denials and revocations of tax-exempt status) for the purpose of administering State laws governing certain tax-exempt organizations and their activities. The final regulations amend existing regulations to reflect changes to the Internal Revenue Code (Code) made by the Pension Protection Act of 2006 (PPA). The final regulations will affect the states choosing to obtain information from the IRS under these rules, as well as the organizations and taxable persons whose tax information is disclosed.

DATES: Effective date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For the date of applicability, see §301.6104(c)-1(k).

FOR FURTHER INFORMATION CONTACT: Seth Groman, (202) 317-5640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

1. Overview

This document contains amendments to 26 CFR part 301 under section 6104(c), which replace current §301.6104(c)-1, which was issued in 1971, amended in 1973 and 1981, and redesignated in 1982, in its entirety. Section 6104(c) was added to the Code by section 101(e) of the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 523) and amended by section 1224(a) of the PPA of 2006 (Pub. L. 109-280, 120 Stat. 1091). Section 6104(c), as amended by the PPA, governs the circumstances under which the IRS may disclose to State officials certain information about organizations described in section 501(c)(3) of the Code, including private foundations (charitable organizations), organizations that have applied for recognition as organizations described in section 501(c)(3) (applicants), certain other exempt organizations, and taxable persons.

On March 15, 2011, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (NPRM) (REG-140108-08) in the **Federal Register** (76 FR 13932). No public hearing was requested or held. One comment letter on the NPRM was received. This Treasury decision adopts the NPRM with certain changes explained in the Summary of Comments and Explanation of Provisions.

2. PPA Amendments to Section 6104(c)

Prior to the passage of the PPA, the IRS was authorized to share certain information with appropriate State officers (ASOs). Section 6104(c)(1), which is unchanged by the PPA, directs the IRS to notify the ASO of (1) a refusal to recognize an entity as a charitable organization; (2) the operation of a charitable organization in a manner not meeting, or no longer meeting, the requirements of its exemption; and (3) the mailing of a notice of deficiency for any tax imposed under section 507 or chapter 41 or 42 of the Code. The directive to notify the ASO of an organization no longer meeting the requirements for exemption under section 501(c)(3) includes not only providing the ASO notice of a revocation of exemption, but also notice (when the IRS is so informed)

that a charitable organization is terminating or has dissolved in accordance with its governing documents. In addition, an ASO, upon request, may inspect and copy the returns, filed statements, records, reports, and other information relating to a final determination as are relevant to any determination under State law.

The PPA added section 6104(c)(2) through (6) of the Code, which expanded the IRS's ability to disclose information to an ASO. With respect to charitable organizations and applicants, the IRS now is authorized under section 6104(c)(2) to disclose information about certain proposed revocations and proposed denials before an administrative appeal has been made and a final revocation or denial has been issued.

Specifically, section 6104(c)(2)(A)(i) and (ii) provides that the IRS may disclose to an ASO proposed refusals to recognize organizations as charitable organizations, proposed revocations of such recognition, and notices of proposed deficiency of excise taxes imposed by section 507 or chapter 41 or 42 of the Code relating to charitable organizations. Previously, only final determinations of these kinds (denials of recognition, revocations, and notices of deficiency) could be disclosed under section 6104(c).

Section 6104(c)(2)(A)(iii) provides that the IRS may disclose to an ASO the names, addresses, and taxpayer identification numbers of applicants. Previously, information on applicants, other than information relating to a final denial of recognition, could not be disclosed under section 6104(c).

Section 6104(c)(2)(B) provides that the IRS may disclose to an ASO the returns and return information of organizations with respect to which information is disclosed under section 6104(c)(2)(A) (proposed determinations and applicant identifying information). Prior law allowed for disclosure under section 6104(c) only of returns and return information of organizations related to their receipt of final determinations.

Section 6104(c)(2)(C) provides that proposed determinations, applicant identifying information, and the related returns and return information with respect to charitable organizations and applicants under sections 6104(c)(2)(A) or (B) may be disclosed to an ASO only upon the ASO's written request and only as necessary to administer State laws regulating charitable organizations. Prior law provided for automatic disclosure – with no requirement for a disclosure request – but only of final determinations.

Under section 6104(c)(2)(D), the IRS may disclose to an ASO, on its own initiative and without a written request, returns and return information with respect to charitable organizations and applicants if the IRS determines that this information may constitute evidence of noncompliance with the laws under the jurisdiction of the ASO. Thus, if the IRS determines these conditions to be met, it may, for example, disclose to an ASO a proposed revocation of exemption for a charitable organization that does not have a determination letter. There was no such provision under section 6104(c) previously.

Section 6104(c)(3) provides that the IRS may disclose returns and return information of organizations described in section 501(c), other than those described in section 501(c)(1) or (3) (such as section 501(c)(4) social welfare organizations, section 501(c)(5) labor organizations, and section 501(c)(6) business leagues), to an ASO upon the ASO's written request, but only for the purpose of, and to the extent necessary in, administering State laws regulating the solicitation or administration of charitable funds or charitable assets of such organizations. Previously, only information relating to charitable organizations or applicants was disclosed under section 6104(c).

Section 6104(c)(4) generally provides that returns and return information of organizations and taxable persons disclosed under section 6104(c) may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State

laws regulating such organizations, under procedures prescribed by the IRS similar to those under section 6103(h)(4). There was no such provision under section 6104(c) previously.

Section 6104(c)(5) generally provides that no return or return information may be disclosed under section 6104(c) to the extent the IRS determines that such disclosure would seriously impair Federal tax administration. This disclosure prohibition, though new in the Code, was provided previously by regulation. See former §301.6104(c)-1(b)(3)(ii) (replaced by these final regulations).

Section 6104(c)(2)(C) (flush language) and (c)(3) provides that the IRS may disclose returns and return information under section 6104(c) to a State officer or employee designated by the ASO to receive such information on the ASO's behalf. Prior law did not provide for IRS disclosures to persons other than ASOs.

Section 6104(c)(6)(B) defines an ASO as the State attorney general, the State tax officer, any State official charged with overseeing charitable organizations (in the case of charitable organizations and applicants), and the head of the State agency designated by the State attorney general as having the primary responsibility for overseeing the solicitation of funds for charitable purposes (in the case of section 501(c) organizations other than Federal instrumentalities and charitable organizations). Before its amendment by the PPA, section 6104(c)(2) defined ASO as the State attorney general, the State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3).

3. PPA Amendments to Related Code Provisions

The PPA also amended section 6103 to make section 6104(c), in its entirety, subject to its confidentiality and disclosure provisions.

Section 6103(a)(2) provides the general rule that returns and return information are confidential and that an officer or employee of a State who receives returns or return

information from the IRS under section 6104(c) must not disclose such information, except as authorized by Title 26 of the United States Code.

Section 6103(p)(3) requires the IRS to maintain permanent standardized records of all requests for inspection or disclosure of returns or return information under section 6104(c) and of all such information inspected or disclosed pursuant to those requests.

Section 6103(p)(4) requires an ASO, as a condition for receiving returns or return information under section 6104(c), to establish and maintain certain safeguards, such as keeping permanent standardized records of all requests and disclosures, maintaining a secure information storage area, restricting access to the information, and providing whatever other safeguards the IRS deems necessary to protect the confidentiality of the information. See §301.6103(p)(4)-1 and IRS Publication 1075, “Tax Information Security Guidelines for Federal, State and Local Agencies”. Publication 1075 is available at <http://www.irs.gov/formspubs>.

The PPA also amended sections 7213, 7213A, and 7431 to impose civil and criminal penalties for the unauthorized disclosure or inspection of section 6104(c) information.

4. IRS Disclosure Procedures

Under section 6103(p)(4)(E), before a Federal or State agency may receive returns and return information from the IRS under section 6103 or section 6104, it must file with the IRS a report detailing the physical, administrative, and technical safeguards implemented by the agency to protect this information from unauthorized inspection or disclosure. Only upon approval of these safeguards by the IRS, as well as satisfaction of any other statutory requirements (such as submission of a written request), may an agency receive the information to which it is entitled under the Code, and then only for the use specified by the relevant statute.

Under various disclosure programs, the IRS and other Federal and State agencies often execute disclosure agreements detailing the responsibilities of the parties and the terms and parameters of the disclosure arrangement. For example, under section 6103(d), the IRS executes a disclosure agreement with each State tax agency to which it discloses information. This agreement, which serves as the written request required by section 6103(d), has been the foundation of the State tax disclosure program under this provision since the Tax Reform Act of 1976.

After the enactment of the PPA, the IRS revised its disclosure procedures under section 6104(c), as set forth in the Internal Revenue Manual, to model them after the section 6103(d) program. Accordingly, the section 6104(c) program uses a disclosure agreement patterned after the section 6103(d) agreement but tailored to the specific requirements and restrictions of section 6104(c).

Summary of Comments and Explanation of Provisions

As noted in the Background, one commenter submitted a letter commenting on the NPRM. After considering the comments in the letter, the NPRM is adopted by this Treasury decision with one clarifying substantive change to §301.6104(c)-1(h) of the proposed regulations (proposed §301.6104(c)-1(h)) and various non-substantive clarifying changes.

1. Security, Confidentiality, and Use Restrictions

The commenter's primary concern is the requirement that all disclosures under section 6104(c) must be made pursuant to an agreement committing the ASO to the security, confidentiality, and use restrictions of section 6103(p)(4), which the commenter characterizes as onerous. The commenter acknowledges, however, that the changes it seeks require legislative action by Congress. The Treasury Department and the IRS agree that the proposed regulations implement the statutory regime enacted by Congress. Thus, these final regulations adopt the safeguard requirements as proposed.

As a threshold matter, the commenter asserts that only a few states have entered into disclosure agreements due to what the commenter characterizes as the cumbersome nature of the safeguard requirements of section 6103(p) and the resources needed to adhere to them. In the commenter's view, the reluctance of states to commit themselves to the safeguard requirements of section 6103 means that the PPA actually decreased the disclosure of information to the states because non-participating states no longer receive the pre-PPA notifications of final denials, revocations, and notices of tax deficiencies.

The Treasury Department and the IRS do not agree with the proposition that few states are willing to participate in IRS information-sharing programs because of the safeguard requirements. As noted in the Background, the section 6104(c) agreement, under which the IRS discloses certain information to the ASO who is charged with the administration of the State's laws regulating charitable organizations or the solicitation or administration of charitable funds or assets, is based on the section 6103(d) agreement, under which the IRS discloses certain information to the State office charged with the responsibility for administering the State's tax laws. Under both section 6104(c) and section 6103(d), the receipt of information from the IRS is conditioned on the recipient agency or official implementing and adhering to the applicable provisions of section 6103(p), as amended by the PPA, to protect the information from unauthorized inspection or disclosure.

The IRS currently has a section 6103(d) agreement in each of the 50 states and the District of Columbia with the agency or official responsible for administering that jurisdiction's tax laws. In addition, the IRS currently has section 6104(c) agreements with 9 ASOs, all of whom are State tax officers responsible for administering State tax laws. For sample disclosure agreements, see Internal Revenue Manual Exhibit 7.28.2-2 (Sample Disclosure Agreement under section 6104(c) for State Tax Officer) and

Exhibit 7.28.2-1 (Sample Disclosure Agreement under section 6104(c) for Attorney General's Office). In view of the current participation in the section 6104(c) disclosure program, and considering the potential for increased participation by other ASOs, the Treasury Department and the IRS consider the publication of these final regulations important in fulfilling the mandate under section 6104(c) to facilitate the enforcement of State law regarding exempt organizations consistent with statutory requirements.

2. Information Shared Without a Disclosure Agreement

The commenter, citing proposed §301.6104(c)-1(b), which provides that the IRS may require an ASO to execute a disclosure agreement or similar document, states that it is not clear what, if any information – other than that available to the general public – would be disclosed to ASOs without an agreement.

Under section 6104(c) before its amendment by the PPA, the IRS was required to disclose to ASOs certain final determinations, with no requirement that the ASO request such disclosure in writing. The PPA changed this procedure, making all of section 6104(c) subject to the confidentiality provisions of section 6103. These final regulations provide that the IRS may not disclose information under section 6104(c) unless the State receiving the information follows the applicable disclosure, recordkeeping, and safeguard procedures of section 6103(p)(4). To give effect to the confidentiality restrictions mandated by Congress, the IRS's disclosure program requires an ASO to enter into a disclosure agreement with the IRS stipulating the procedures for disclosure under section 6104(c), as well as the restrictions on use and redisclosure. Because of these statutory requirements, without such an agreement, an ASO may receive only information otherwise available to the public.

3. Use of Disclosed Information

The commenter objects to proposed §301.6104(c)-1(h)(1), which requires an ASO intending to use any disclosed information in a State administrative or judicial

proceeding to notify the IRS of this intention before such use. Under this provision, an ASO may use the information as intended only in accordance with any conditions the IRS might impose, and only to the extent that the IRS determines that the disclosure would not seriously impair Federal tax administration. The commenter states that by disclosing taxpayer information initially to an ASO, the IRS already has determined under proposed §301.6104(c)-1(e) that this information will not seriously impair Federal tax administration and that requiring the same determination again after the initial disclosure would place an ASO at risk of spending time and resources on developing a State law case, only to be told by the IRS that the ASO cannot proceed. The commenter asserts that, in an environment of scarce resources, this restriction is likely to discourage ASOs from taking that risk.

Section 6104(c)(5) prohibits the disclosure under section 6104(c)(1) through (3) of returns and return information to an ASO, or redisclosure of such information by an ASO in a State proceeding described in section 6104(c)(4), if the IRS determines that such disclosure or redisclosure would seriously impair Federal tax administration. Section 6104(c)(5) addresses two separate actions or events, requiring in most circumstances two separate determinations by the IRS. Because the facts and circumstances surrounding a particular administrative or judicial proceeding typically would not be known to the IRS at the time of the initial disclosure of taxpayer information to an ASO, it would not be possible during the initial disclosure to the ASO for the IRS to determine whether the use of that information in a subsequent State proceeding would seriously impair Federal tax administration (such as identifying a confidential informant or compromising a civil or criminal tax investigation). It is possible that the IRS could determine that the disclosure to an ASO would not seriously impair Federal tax administration but that disclosure by an ASO in a State proceeding would.

To fulfill its statutory duties, the IRS must evaluate the effect of the use of disclosed information in a State proceeding before authorizing any such redisclosure.

4. Restrictions on Redisclosure

The commenter states that the prohibition in proposed §301.6104(c)-1(h)(2) on the redisclosure of return information to an ASO's agent or contractor appears to include persons such as expert witnesses, court reporters, and other litigation support service providers often necessary to conduct civil and judicial proceedings within the ambit of proposed §301.6104(c)-1(g)(2), as limited by proposed §301.6104(c)-1(h)(1), which is discussed in the prior section of this Summary of Comments and Explanation of Provisions. The commenter contends that this restriction is "simply untenable" and serves to "further undercut any rational basis" for ASOs to obtain returns and return information under section 6104(c).

The requirement in proposed §301.6104(c)-1(h)(1) that an ASO notify the IRS before using any disclosed information in a State proceeding is a limit on the authority of the ASO under proposed §301.6104(c)-1(g)(2) to make such use of disclosed information under rules similar to those in section 6103(h)(4), as provided in section 6104(c)(4). With respect to section 6103(h)(4), the IRS construes "disclosure in judicial and administrative proceedings" to include the disclosure of returns and return information in court during a trial (whether or not some of those present might be considered an agent or contractor, such as a court reporter or expert witness); in formal or informal discovery, including depositions; in settlement negotiations; and in mediation or arbitration proceedings. Disclosure of returns and return information is permitted to participants in, or parties to, a judicial or administrative proceeding (including expert witnesses) under practices and procedures generally applicable to the proceeding, and subject to rules governing the proceeding. The prohibition in proposed §301.6104(c)-1(h)(2) on the redisclosure of return information to an ASO's agent or contractor was not

intended to hinder a State's ability to conduct investigations or civil litigation under its statutory authority.

In considering this comment regarding the interaction of the two redisclosure limitations of proposed §301.6104(c)-1(h), however, it became apparent that, by identifying the agent-contractor disclosure prohibition as one of two limitations on the redisclosure of returns and return information by an ASO, proposed §301.6104(c)-1(h)(2) might be read as limiting the application of such a restriction solely to redisclosures. The prohibition on disclosing to agents and contractors, however, is a broader rule, applying both to initial disclosures by the IRS as well as to subsequent redisclosures by an ASO. With respect to disclosures by the IRS, proposed §301.6104(c)-1(f)(1)(ii) provides that the IRS may disclose return information to someone other than the ASO only if that person is a State officer or employee designated by the ASO. With respect to redisclosures by an ASO, proposed §301-6104(c)-1(g)(1) provides that an ASO who receives information from the IRS under section 6104(c) may redisclose that information for certain purposes to another State officer or employee. The legislative history of section 6104(c) provides that the term “officer or employee” does not include agents and contractors, and the final regulations apply this agent-contractor disclosure prohibition equally to the IRS and the ASO.

Consequently, these final regulations clarify the proper application of the prohibition against disclosure to agents and contractors by eliminating proposed §301.6104(c)-1(h)(2) and adding definitional clauses to proposed §301.6104(c)-1(f)(1)(ii) and (g)(1) and (2) emphasizing that the agent-contractor disclosure prohibition applies both to IRS disclosures and to ASO redisclosures.

5. Application of Document Retention and Freedom-of-Information Laws

The commenter notes that many states have document retention and freedom-of-information laws that might be implicated whenever an ASO receives or acts upon

tax return information acquired from the IRS. According to the commenter, nothing in the PPA or regulations addresses what portions of tax return information may become a part of the ASO's own records or work product.

This issue, however, is addressed by section 6103, made applicable to section 6104(c) by the PPA. Among the disclosure, recordkeeping, and safeguard provisions of section 6103, section 6103(p)(4) requires an ASO, as a condition for receiving returns or return information under section 6104(c), to establish and maintain certain safeguards, such as keeping permanent standardized records of all requests and disclosures, maintaining a secure information storage area, restricting access to the information, and providing whatever other safeguards the IRS deems necessary to protect the confidentiality of the information. Upon completion of the ASO's use of the returns or return information it receives under section 6104(c), section 6103(p)(4)(F) requires the ASO to return the information, along with any copies, to the IRS, or to render it undisclosable and report to the IRS how it was so rendered. Rendering returns and return information undisclosable requires the ASO to physically destroy the information. Thus, after its use, any information an ASO receives from the IRS under section 6104(c) should no longer be in the ASO's possession and, so, will not become part of the ASO's own records or work product.

6. Designation by Attorney General

Referring to the definition of an ASO in section 6104(c)(6)(B)(iv) (in the case of tax-exempt entities other than charitable organizations or Federal instrumentalities), the commenter states that it is not clear in what circumstances an attorney general would designate the agency responsible for overseeing charitable solicitation. If, for example, the authority to designate the head of the agency responsible for overseeing charitable solicitation is vested in the secretary of state, the agency head referred to in the statute

and the regulations would not be able to meet the definition of an ASO in proposed §301.6104(c)-1(i)(1)(iv).

In light of the variations in State laws, it is doubtful that Congress used the term “designate” in section 6104(c)(6)(B)(iv) to mean a delegation of legal authority (and there is no indication in the legislative history of the PPA that such a meaning was intended). In contrast to how the term is used in section 6104(c)(2)(C) (dealing with the procedures for disclosure), where it does mean to delegate authority, the term “designate” in section 6104(c)(6)(B)(iv) is a generic one, meaning the ability to specify, identify, or acknowledge the head of the agency in a particular State who is responsible for overseeing charitable solicitation. The attorney general, as an ASO under §301.6104(c)-1(i)(1)(i), should be able to identify such an agency head, whether or not the attorney general is able to confer the requisite authority on any particular State official.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. The analysis requirements of the RFA do not apply because states are not considered small entities for purposes of the RFA. Therefore, a regulatory flexibility analysis is not required. Accordingly, the Secretary of the Treasury’s delegate certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Seth Groman of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), though other persons in the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry for §301.6104(c)-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 301.6104(c)-1 also issued under 26 U.S.C. 6104(c).

* * * * *

Par. 2. Section 301.6104(c)-1 is revised to read as follows:

§ 301.6104(c)-1 Disclosure of certain information to State officials.

(a) In general--(1) Charitable organizations and applicants. Subject to the disclosure, recordkeeping, and safeguard provisions of section 6103 of the Internal Revenue Code (Code), and only as necessary to administer State laws regulating

charitable organizations, upon written request by an appropriate State officer (ASO, as defined in paragraph (i)(1) of this section), the Internal Revenue Service (IRS) may, under section 6104(c)(1) and (2), disclose or make available to the ASO (or to a person designated by the ASO as provided in paragraph (f)(1)(ii) of this section) the returns and return information described in paragraph (c) of this section with respect to--

(i) Any organization described or formerly described in section 501(c)(3) and exempt or formerly exempt from taxation under section 501(a) (a charitable organization); or

(ii) Any organization that has applied for recognition as an organization described in section 501(c)(3) (an applicant).

(2) Section 501(c) organizations not described in section 501(c)(1) or (3). Subject to the disclosure, recordkeeping, and safeguard provisions of section 6103, and upon written request by an ASO, the IRS may disclose or make available to the ASO (or to a person designated by the ASO as provided in paragraph (f)(1)(ii) of this section) under section 6104(c)(3) returns and return information regarding any organization described or formerly described in section 501(c) other than section 501(c)(1) or (3). Such information will be disclosed or made available only as necessary to administer State laws regulating the solicitation or administration of the charitable funds or charitable assets of these organizations.

(b) Disclosure agreement. The IRS may require an ASO to execute a disclosure agreement or similar document specifying the procedures, terms, and conditions for the disclosure or inspection of information under section 6104(c), including compliance with the safeguards prescribed by section 6103(p)(4), as well as specifying the information to be disclosed. Such an agreement or similar document constitutes the request for disclosure required by section 6104(c)(1)(C), as well as the written request required by section 6104(c)(2)(C)(i) and (c)(3).

(c) Disclosures regarding charitable organizations and applicants--(1) In general.

With respect to any organization described in paragraph (d) of this section, the IRS may disclose or make available for inspection under section 6104(c)(1) and (2) and paragraph (a)(1) of this section to an ASO the following returns and return information with respect to a charitable organization or applicant:

(i) A refusal or proposed refusal to recognize an organization's exemption as a charitable organization (a final or proposed denial letter).

(ii) Return information regarding a grant of exemption following a proposed denial.

(iii) A revocation of exemption as a charitable organization (a final revocation letter), including a notice of termination or dissolution.

(iv) A proposed revocation of recognition of exemption as a charitable organization (a proposed revocation letter).

(v) Return information regarding the final disposition of a proposed revocation of recognition other than by final revocation.

(vi) A notice of deficiency or proposed notice of deficiency of tax imposed under section 507 or chapter 41 or 42 of the Code on the organization or on a taxable person (as described in paragraph (i)(4) of this section).

(vii) Returns and return information regarding the final disposition of a proposed notice of deficiency of tax imposed under section 507 or chapter 41 or 42 of the Code on the organization other than by issuance of a notice of deficiency.

(viii) The names, addresses, and taxpayer identification numbers of applicants for charitable status, provided on an applicant-by-applicant basis or by periodic lists of applicants. Under this paragraph (c)(1)(viii), the IRS may respond to inquiries from an ASO as to whether a particular organization has applied for recognition of exemption as a charitable organization.

(ix) Return information regarding the final disposition of an application for recognition of exemption where no proposed denial letter is issued, including whether the application was withdrawn or whether the applicant failed to establish its exemption.

(x) Returns and return information relating to the return information described in paragraph (c)(1) of this section, except for returns and return information relating to proposed notices of deficiency described in paragraph (c)(1)(vi) of this section with respect to taxable persons.

(2) Disclosure of evidence of noncompliance with certain State laws. With respect to any organization described in paragraph (d) of this section, the IRS may disclose to the ASO or make available for the ASO's inspection under section 6104(c)(1) and (2) and paragraph (a)(1) of this section the returns and return information of a charitable organization or applicant, as listed in paragraph (c)(1) of this section, if the IRS determines that such information might constitute evidence of noncompliance with the laws under the jurisdiction of the ASO regulating charitable organizations and applicants. Such information may be disclosed on the IRS's own initiative, subject to the disclosure, recordkeeping, and safeguard provisions of section 6103. Disclosures under this paragraph (c)(2) may be made before the IRS issues a proposed determination (denial of recognition, revocation, or notice of deficiency) or any other action by the IRS described in this section.

(d) Organizations to which disclosure applies. Regarding the information described in paragraphs (a)(1) and (2) of this section, the IRS will disclose or make available for inspection to an ASO such information only with respect to--

(1) An organization formed under the laws of the ASO's State;

(2) An organization, the principal office of which is located in the ASO's State;

(3) An organization that, as determined by the IRS, is or might be subject to the laws of the ASO's State regulating charitable organizations or the solicitation or administration of charitable funds or charitable assets; or

(4) A private foundation required by §1.6033-2(a)(iv) of this chapter to list the ASO's State on any of the foundation's returns filed for its last five taxable years.

(e) Disclosure limitations. Notwithstanding any other provision of this section, the IRS will not disclose or make available for inspection under section 6104(c) any information, the disclosure of which it determines would seriously impair Federal tax administration, including, but not limited to--

(1) Identification of a confidential informant or interference with a civil or criminal tax investigation; and

(2) Information obtained pursuant to a tax convention, as defined in section 6105(c)(2), between the United States and a foreign government.

(f) Disclosure recipients--(1) In general. The IRS may disclose returns and return information under section 6104(c) to, or make it available for inspection by--

(i) An ASO, as defined in paragraph (i)(1) of this section, or

(ii) A person other than an ASO, but only if that person is a State officer or employee (which excludes an agent or contractor) designated by the ASO to receive information under section 6104(c) on behalf of the ASO, as specified in paragraph (f)(2) of this section.

(2) Designation by ASO. An ASO may designate State officers or employees to receive information under section 6104(c) on the ASO's behalf by specifying in writing each person's name and job title, and the name and address of the person's office. The ASO must promptly notify the IRS in writing of any additions, deletions, or other changes to the list of designated persons.

(g) Redisdisclosure--(1) In general. An ASO to whom a return or return information has been disclosed may thereafter disclose such information to another State officer or employee (which excludes an agent or contractor) only as necessary to administer State laws governing charitable organizations or State laws regulating the solicitation or administration of charitable funds or charitable assets of noncharitable exempt organizations.

(2) Civil administrative or judicial proceedings. Except as provided in paragraph (h) of this section, an ASO to whom a return or return information has been disclosed may thereafter disclose such information to another State officer or employee (which excludes an agent or contractor) who is personally and directly preparing for a civil proceeding before a State administrative body or court in a matter involving the enforcement of State laws regulating organizations with respect to which information can be disclosed under this section, solely for use in such a proceeding, but only if--

(i) The organization or a taxable person is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the civil liability of the organization or a taxable person, or collecting such civil liability, under State laws governing organizations with respect to which information can be disclosed under this subsection;

(ii) The treatment of an item reflected on such a return is directly related to the resolution of an issue in the proceeding; or

(iii) The return or return information directly relates to a transactional relationship between the organization or a taxable person and a person who is a party to the proceeding that directly affects the resolution of an issue in the proceeding.

(h) Redisdisclosure limitation. Before disclosing any return or return information received under section 6104(c) in a proceeding described in paragraph (g)(2) of this section, the ASO must notify the IRS of the intention to make such a disclosure. No

State officer or employee may make such a disclosure except in accordance with any conditions the IRS might impose in response to the ASO's notice of intent. No such disclosure may be made if the IRS determines that the disclosure would seriously impair Federal tax administration.

(i) Definitions. For purposes of section 6104(c) and this section--

(1) Appropriate State officer or ASO means--

(i) The State attorney general;

(ii) The State tax officer;

(iii) With respect to a charitable organization or applicant, any State officer other than the attorney general or tax officer charged with overseeing charitable organizations, provided that the officer shows the IRS that the officer is an ASO by presenting a letter from the State attorney general describing the functions and authority of the officer under State law, with sufficient facts for the IRS to determine that the officer is an ASO; and

(iv) With respect to a section 501(c) organization that is not described in section 501(c)(1) or (c)(3), the head of the agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes, provided that the officer shows the IRS that the officer is an ASO by presenting a letter from the State attorney general describing the functions and authority of the officer under State law, with sufficient facts for the IRS to determine that the officer is an ASO.

(2) Return has the same meaning as in section 6103(b)(1).

(3) Return information has the same meaning as in section 6103(b)(2).

(4) Taxable person means any person who is liable or potentially liable for excise taxes under chapter 41 or 42 of the Code. Such a person includes--

(i) A disqualified person described in section 4946(a)(1), 4951(e)(4), or 4958(f);

- (ii) A foundation manager described in section 4946(b);
- (iii) An organization manager described in section 4955(f)(2) or 4958(f)(2);
- (iv) A person described in section 4958(c)(3)(B);
- (v) An entity manager described in section 4965(d); and
- (vi) A fund manager described in section 4966(d)(3).

(j) Failure to comply. Upon a determination that an ASO has failed to comply with the requirements of section 6103(p)(4), the IRS may take the actions it deems necessary to ensure compliance, including the refusal to disclose any further returns or return information to the ASO until the IRS determines that the requirements of section 6103(p)(4) have been met. For procedures for the administrative review of a determination that an authorized recipient has failed to safeguard returns or return information, see §301.6103(p)(7)-1.

(k) Applicability date. The rules of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: June 7, 2022.

Lily Batchelder,
Assistant Secretary of the Treasury (Tax Policy).

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